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KTIP

SUBJECT: CITIZENSHIP MANUAL OUTLINES LEGAL MAZE FACING STATELESS HILL TRIBES

REF: 08 CHIANG MAI 192 (MINORITY HILL TRIBES STILL PLAGUED BY STATELESSNESS)

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Summary and Comment

¶1. UNESCO has collaborated with the Thai Government (RTG) and an NGO to publish a Citizenship Manual that will serve as a "how to" guide for government officials and civil society on citizenship procedures among stateless hill tribe minorities. Broadly speaking, a highlander who is born in Thailand and has a father or mother also born in Thailand is eligible for Thai citizenship. Also eligible are highlanders born in Thailand of alien parent(s) who entered Thailand before October 3, 1985. In either case, the onus is on the applicant and parent(s) to present various pieces of evidence to be verified by local officials. The Manual does not address the two latest developments in the evolving legal landscape: the 2008 Nationality Act and 2008 Civil Registration Act, both of which improve citizenship eligibility for stateless hill tribes. UNESCO plans to update the Citizenship Manual once clarity is established on the Interior Ministry's implementing regulations for the two new laws.

¶2. Comment. As Reftel notes, roughly half of Thailand's estimated 900,000 hill tribe minorities lack citizenship, compounding significantly their disadvantaged status. Thai citizenship law continues to evolve in a positive direction, as the RTG collaborates with UN agencies and NGOs. However, the fact that the Citizenship Manual weighs in at 174 pages indicates the extreme complexity of the legal regime facing stateless highlanders. This is due to the plethora of citizenship-related laws and regulations, and the existence of substantial gray areas within and among them. This in turn lends itself to corruption and extortion by local officials, which compounds other obstacles hill tribe people face in the citizenship process (e.g., insufficient documentary evidence to prove eligibility, incomplete and contradictory census data, and language barriers). The very need for the Manual underscores another obstacle: responsible officials often lack understanding of their obligations, and stateless highland minorities often lack knowledge of their citizenship rights. The Manual is a positive step in this regard, and will be bolstered by RTG, UN agency and NGO plans for outreach, training and education - efforts that Post will seek to support. End Summary and Comment.

A "How To" Guide for Hill Tribe Citizenship

¶3. Reftel outlined the background and current state of play of the statelessness that affects roughly half of Thailand's

estimated 900,000-to-one-million hill tribe minorities. The cable identified encouraging trends in efforts by the Royal Thai Government (RTG), NGOs and UN agencies to promote citizenship among stateless hill tribe people. One such effort was the recent publication of a Citizenship Manual that will serve as a standardized "how to" guide for government officials and civil society on registration and citizenship procedures among hill tribe communities. The Manual was commissioned by UNESCO and authored by Thailand's Coalition to Fight Against Child Exploitation (FACE Foundation), with collaboration from the RTG.

The Manual, available in both Thai and English, has already been distributed to RTG agencies and NGOs. (Note: Post has pouched several CD copies of the English version to EAP/MLS).

Clarity in 174 Pages

¶4. That the Manual weighs in at 174 pages indicates the comprehensiveness of the effort, but also the extreme complexity of the legal regime facing stateless highlanders seeking to determine their status. In fact, a leading expert on this legal regime - Surapong Kongchantuk, Vice Chairman of the Law Society of Thailand's Human Rights Subcommittee on Ethnic Minorities, Stateless, Migrant Workers and Displaced Persons - has told Consulate staff that it took him about ten years to develop full command of the topic of legal status/citizenship for stateless minorities. The complexity is mainly due to the plethora of laws and regulations, and the existence of substantial gray areas within and among them.

¶5. This cable summarizes the main points of the Citizenship Manual. We focus on identifying which categories of stateless minorities are eligible for citizenship or legal permanent residence, and the requirements for attaining such status. This analysis begins at para six. But first, a few salient points:

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-- per Reftel, citizenship for Thailand's hill tribe people is an acquired status that is not automatically conferred by birth on Thai soil. Determining one's eligibility is an important first step, but thereafter significant obstacles remain. Chief among these are: insufficient documentary evidence for stateless hill tribe people to prove their eligibility; incomplete and contradictory census data; language barriers; cautious and/or corrupt local officials; and a complex appeals process.

-- the very need for the Manual underscores another obstacle: responsible officials often lack understanding of their obligations, and stateless highland minorities often lack knowledge of their citizenship rights. The FACE Foundation Director notes in the Manual's preface that, despite three years having passed since the RTG approved its Strategy on Legal Status and Rights Management for Undocumented Persons, some government officials working on the issue "still do not clearly understand how to implement policy under this Strategy."

-- the legal landscape continues to evolve, adding further complexity. Per Reftel, in 2008 Thailand adopted a Nationality Act and Civil Registration Act, both of which amend previous laws and improve citizenship eligibility for stateless hill tribe minorities. However, the implementing regulations recently issued by the Interior Ministry are ambiguous in certain parts; UN agencies and NGOs have requested clarification. UNESCO plans to update the Citizenship Manual once clarity is established on the implementing regulations for the two 2008 laws.

The Manual Says . . .

¶6. The Manual breaks citizenship eligibility into three broad categories, which we will call A, B and C:

-- Category A: Born in Thailand of Thai parent(s).

A highlander who is born in Thailand AND has a father or mother also born in Thailand is eligible for Thai citizenship. That said, the onus is on the applicant and parent(s) to present various pieces of evidence to be verified, such as birth certificate or delivery certificate, household registration, household survey record, identification card or other personal records. The controlling law in this case is the 2000 Regulation of the Central Registration Bureau on the Consideration of Legal Status Registration for Highlanders. This law stipulates a decision deadline of 60 working days; the ultimate decision-maker is the chief district officer. The applicant may appeal a denial.

-- Category B: Born outside Thailand and immigrated illegally.

People in this category are considered illegal migrants. This would include the estimated one-to-two million migrant workers, mostly ethnic Burmese, currently in Thailand. The Burmese migrant workers are generally not eligible for legal permanent resident (LPR) status or citizenship, and are beyond the scope of this cable (and the Manual). However, certain sub-groups of illegal migrants who entered Thailand BEFORE October 3, 1985 are eligible for LPR status, with their children (if born in Thailand) eligible for citizenship (see Cat C). These sub-groups are:

-- Category B-1. Persons in this group must be registered as hill tribe people AND hold a highlander identification card or a household registration. Provided they entered the country before 1985, they are eligible to apply for LPR status IF they have lived in Thailand for at least 15 years or had a permanent domicile in one specific district for at least 10 consecutive years. Other requirements include having "interest in using the Thai language," loyalty toward country and King, a legal occupation and financial stability, and no involvement with narcotics or environmental destruction. These latter requirements must be vouched for by at least three people, two of whom must have local official status. (Comment: that local officials have this vouching discretion appears to lend itself to corruption and extortion, both of which are widely reported by NGO groups).

-- Category B-2. Persons in this group are non-hill tribe members who nonetheless hold highlander identification cards. This group is primarily composed of ethnic Shan and other non-hill tribe minority groups who fled Burma and settled in northern Thailand's highland areas. The RTG included these

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groups along with true hill tribes in its highlander registration drive in the early 1990s, and issued the same type of highlander identification cards to all. Like the hill tribe people in Cat B-1, the Cat B-2 persons are eligible to apply for LPR status provided they can prove they entered the country before 1985 and are currently domiciled in Thailand. Other requirements largely mirror those in Cat B-1, but with two differences: Cat B-2 applicants must have "sufficient command of the Thai language to be able to speak and understand" (subject to passing a Thai language exam verified by the local registrar); and must not pose any risk to national security, have a prior conviction (excepting minor offenses), or be unable to hold a regular occupation due to physical or mental disability.

-- Category B-3. This category is essentially the same as Cat B-2, but covers a different sub-set of three non-hill tribe minority groups. The first is a small community of Nepalese immigrants who lived in Burma under British colonial rule before fleeing to central Thailand after Burma gained independence in 1947. The second group are ethnic Chinese, claiming to be relatives of anti-Communist soldiers of Chiang

Kai-shek's Kuomintang, who immigrated to Thailand between the years 1954-85. The third and largest group are "Displaced Burmese Nationals," as defined by a 1976 RTG policy declaration. This group includes ethnic minorities who lived in Burma before fleeing to Thailand, such as the Hmong, Karen, Shan, and Mon-Khmer. There has long been overlap and confusion between this group and the Burmese ethnic minorities described in Category B-2 above, which complicates claims for LPR status and/or citizenship.

For Categories B-1, B-2, and B-3, the onus is on the applicant to present various pieces of evidence for verification. The controlling laws are cabinet resolutions passed on October 3, 1995 and August 29, 2000. The latter, per Reftel, declared that all children born in Thailand of hill tribe/highlander parents who entered the country before October 3, 1985 are eligible for citizenship regardless of their parents' legal status at the time they were born (see Cat C). The ultimate decision-maker for all Cat B cases is the Minister of Interior, via several intermediate stops (district registrar, provincial Subcommittee on the Consideration of Granting Legal Status for Ethnic Minority Groups, and the Interior Ministry's committee by the same name). No decision deadline or appeal process is indicated. Cat B cases who obtain LPR status are no longer considered illegal migrants; they have complete freedom of movement and can take up any occupation.

(Note: An additional bureaucratic complication for Category B cases is that legal status matters for each Cat B sub-group are handled by a different division of the Interior Ministry's Department of Provincial Administration (DOPA). Cat B-1 cases are the responsibility of the DOPA Public Coordination Division; Cat B-2 is handled by DOPA's Ethnic Minority Registration Division; and Cat B-3 by the Information Division. End Note).

-- Category C: Born in Thailand of alien parents; i.e., parents born outside the country and immigrated into Thailand. (Note: Cat C persons can also be described as "children of Cat B persons").

People in this category are considered illegal migrants, but with the right to apply for Thai citizenship under the cabinet resolution of August 29, 2000, provided at least one parent entered Thailand BEFORE October 3, 1985. Cat C cases apply to those who were negatively impacted by a 1972 government decree (Order 337 of the Revolutionary Council) that automatically revoked/barred Thai citizenship for persons born in Thailand of alien hill tribe parents both before and after 1972. This Order, issued by a military government, was intended to address national security concerns associated with the growing influx of migrants to the hills of northern Thailand. It repealed - retroactively - previous Thai law stipulating that Thai citizenship was automatically conferred by reason of birth in Thailand, regardless of parents' nationality. The result was that large numbers of highlanders who had been born in Thailand before 1972 had their citizenship revoked, and an even larger number born after 1972 were rendered ineligible for citizenship.

The UNESCO Manual describes a complex process by which highlanders impacted by Order 337 may apply for either LPR status or citizenship, with the procedure differing depending on whether the applicant was born before or after the Order was issued in 1972. However, this appears to have been overtaken by the 2008 Nationality Act mentioned in para five. It stipulates that persons born in Thailand whose citizenship was revoked, or

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who were consequently rendered ineligible for citizenship, by Order 337, "shall acquire Thai nationality from the day this Act comes into force if the person has evidence of civil registration proving a domicile within the Thai Kingdom . . . and having good behavior." As noted above, UNESCO plans to update its Manual to reflect this change once clarity is established on the implementing regulations.

For Cat C cases, evidentiary requirements, processing timelines, decision-making authority, and the appellate process will be defined in the implementing regulations for the 2008 Nationality Act, superseding what is described in the current version of the Citizenship Manual.

Birth and Household Registration Also Complex

17. The Citizenship Manual devotes 24 pages to describing Thailand's birth registration and household registration processes. We will not summarize those here, but - per Reftel - we note that the legal and bureaucratic complexities of these procedures are among the various obstacles faced by hill tribe people in obtaining Thai citizenship. The 2008 Civil Registration Act cited in para five helpfully stipulates that every child born in Thailand shall receive an official birth certificate, regardless of the parents' status. However, it does not appear to simplify significantly the complexity of the process. UNESCO's update of the Citizenship Manual will address this.
MORROW